

SUSPENSION OF INSTITUTIONS AND HOMES

PURPOSE: To outline the situations and to establish the procedures used to suspend institutions and homes.

SCOPE: Institutions and family day care homes participating in the Child and Adult Care Food Program (CACFP).

DESCRIPTION: Suspension is the **temporary** ineligibility of institutions and homes to participate in the program, including program payments. This procedure will be used by the State Agency and sponsoring organizations to effectively prevent an institution or home that has committed certain abuses from receiving any Program payments during the suspension.

Suspension is not the same as the disallowance of an invalid claim submitted by an institution or home. Suspension and disallowing a claim both result in the non-payment of one or more claims. Under disallowance of an invalid claim, the institution or home continues to participate and continues to be reimbursed for valid portions of claims. Suspension does not replace the requirement to disallow any invalid claim that is submitted.

Suspension is a compliance tool reserved for two situations:

1. An imminent threat to the health or safety of participants or to the public (institutions and home), and
2. Submission of false or fraudulent claims (institutions, only)

Imminent Threat to Health or Safety

The action required by the State Agency or the sponsor depends upon who finds the problem first, the State or local health or licensing authority, or the CACFP State Agency or the sponsor.

- A. When the health or licensing authority has determined there is an imminent threat to health or safety at an institution or home, it must be immediately suspended from program participation, even before the childcare license or health permit is formally revoked. When the State Agency learns of an imminent threat to health or safety, it must immediately suspend the institution. A sponsor faced with this situation would suspend the home. In both cases, the State Agency or sponsor must be certain the information regarding the determination and pending action is accurate.

Even if the violation does not result in the immediate revocation of the license or health permit, **a citation for a problem that could lead to revocation requires the State Agency or sponsor to suspend the institution or home's participation.**

- B. When the CACFP State Agency or sponsor discovers an imminent threat to health or safety before the health or licensing authority, it must take immediate action to inform the State or local health or licensing authority of the health or safety violation. The State Agency or sponsor must take whatever action is consistent with the recommendations and requirements of the authority.

The State Agency or sponsor does not have to wait to get a formal recommendation for action from the health or licensing authority. It must immediately act to suspend participation whenever possible. The only exception would be in the rare situation when suspension would directly conflict with the actions of the health or licensing authority. USDA expects the State Agency and sponsors to work with their health and licensing counterparts to avoid conflicts.

There is no time limit for a suspension due to imminent threat to health or safety.

Suspension For False Or Fraudulent Claims

Suspension for submitting a false or fraudulent claim may only be applied to institutions. A sponsor may not suspend a home for submitting a false or fraudulent claim, but would disallow the claim, declare the home seriously deficient, and initiate action to terminate and disqualify the home through the seriously deficient process.

The law sets a maximum time of 120 days for a suspension on the submission of a false or fraudulent claim.

Appeal Rights

No appeal opportunity is available to institutions or homes before a suspension for health or safety violations. If the suspension results from the submission of a false or fraudulent claim, the institution does have an opportunity to request a limited appeal called a “suspension review” before the proposed suspension takes place.

Because the action must be immediate upon the discovery of an imminent threat to health or safety, there is no opportunity for corrective action or appeal before the suspension takes place. Once the institution or home is

suspended, the home or institution may appeal the actual suspension, as well as the proposed termination and disqualification through the normal appeal process. If the suspension is overturned, institutions will be paid for eligible meals served and allowable administrative costs incurred, and homes may claim eligible meals served, during the suspension.

In the case of a false or fraudulent claim, the law authorized suspension, but required State Agencies to first give institutions a chance to oppose the proposed suspension through a limited appeal, the suspension review. This review is available to institutions before the suspension for a false or fraudulent claim takes effect and is limited to a review of written documentation. If the proposed suspension is upheld in the suspension review, the institution can appeal the suspension when it appeals its proposed termination and disqualification. If the hearing official later overturns the suspension, the State Agency must pay for eligible meals served and allowable administrative costs incurred during the suspension period.

Pages 4-9 of this instruction outline the steps to follow for various situations regarding suspension.

The State Agency will provide sponsors of family day care homes with prototype notices used in the suspension process.

Source: Agricultural Risk Protection Act (ARPA), Federal Regulations §226.2, §226.6(c)(5) & (6), 226.6(k)(3), and 226.16(1)(4)

**Steps in the Process of Suspending Institutions: Imminent Health/Safety (H/S) Threat
(The State Agency or Food and Nutrition Services (FNS) can suspend Institutions)**

Situation 1 – Imminent H/S threat discovered by the health/licensing authority

Step 1: After being informed about the determination, the CACFP State Agency immediately sends a Suspension Notice to the institution.

The Suspension Notice:

- Identifies serious deficiencies that constitute the imminent threat to H/S
- Identifies responsible principals and responsible individuals
- Informs the institution that its participation is suspended as of date of notice
- Proposes to terminate the institution's agreement
- Proposes to disqualify the institution, the responsible principals and responsible individuals

The Suspension Notice is sent to:

- The executive director of the institution
- The Chairman of the Board of Directors
- All responsible principals and responsible individuals
- FNS regional office (copy)

Step 2: State Agency updates the State Agency list with the following information:

- Serious deficiency
- Name of the suspended institution
- Names of responsible principals and responsible individuals

Step 3: The institution and/or responsible principals (RP)/responsible individuals (RI) request an appeal of the suspension, proposed termination and proposed disqualification within 15 days of receipt of the notice.

(Note: If the institution does not request an appeal, the process ends when the 15 days have elapsed and the State Agency issues a notice of termination and disqualification. See details for notice in step 5(a) below.)

Step 4: The hearing is held and a decision is rendered.

Step 5: The institution and all parties (RP/RI) are informed of the hearing decision.

- (a) If the State Agency wins the appeal, the State Agency must send a Notice of Termination and Disqualification to the institution (executive director and chairman of the board) and responsible principals and responsible individuals, with a copy to FNSRO.

The notice must inform that:

- The institution's agreement is terminated, and
 - The institution, responsible principals and responsible individuals are disqualified and placed on the National Disqualified List.
- (b) If the State Agency loses the appeal, the State Agency must inform the institution (executive director and chairman of the board) and responsible principals and responsible individuals, with a copy to FNSRO, that:
- The institution's suspension ended on the date of the hearing decision,
 - The institution's agreement is not terminated,
 - Neither the institution, nor the responsible principals or responsible individuals are disqualified, and
 - The institution can claim for eligible meals and allowable administrative costs incurred during suspension.

Step 6: State Agency updates the State Agency list to reflect the hearing decision and informs FNSRO of any termination or disqualifications.

Situation 2 - Imminent threat to H/S is discovered by the CACFP State Agency

Step 1: State Agency discovers an imminent threat to H/S and immediately informs the health/licensing authority.

Step 2: State Agency takes action that is consistent with the recommendations or requirements of the health/safety licensing authority. This will usually be suspension.

If the health/licensing authority informs the CACFP State Agency that suspending the institution would conflict with the actions of the health/licensing authority, other examples of action could include requiring corrective action such as mandatory training on a food safety issue, or increased monitoring. Additional steps depend on the action taken by the State Agency. If the State Agency suspends participation, see Situation 1.

Steps in the Process of Suspending Providers: Imminent Threat to Health or Safety
(Sponsors can suspend homes/providers)

Situation 1 - Imminent threat is discovered by the health/licensing authority

Step 1: After being informed about the problem, the sponsor immediately sends a Suspension Notice to the home, that:

- Identifies all serious deficiencies that constitute the imminent threat
- Informs the home that its participation is suspended as of date of notice
- Proposes to terminate the home's agreement for cause
- Proposes to disqualify the home and the provider
- Outlines the procedures for appealing the suspension, proposed termination and proposed disqualification.

A copy of this notice is sent to the State Agency.

Step 2: The provider requests an appeal of the suspension, proposed termination and proposed disqualification within 15 days of receipt of the notice. (Note: If the provider does not request an appeal, the process ends when the 15 days have elapsed and the sponsor issues a notice of termination and disqualification. See details for notice in step 4(a) below.)

Step 3: The hearing is held and a decision is rendered.

Step 4: The sponsor informs the provider of the hearing decision (sends the State Agency a copy of this letter).

(a) If the sponsor wins the appeal, the sponsor must send a Notice of Termination and Disqualification to the provider. The notice must inform the provider that:

- The home's agreement is terminated for cause, and
- The provider is disqualified and placed on the National Disqualified List.

(b) If the sponsor loses the appeal, the sponsor must inform the provider that:

- The home's suspension ended on the date of the hearing decision,
- The home's agreement is not terminated,
- The provider is not disqualified, and can claim for eligible meals served during the suspension.

Step 5: The sponsor sends the State Agency a copy of the notice.

Step 6: If the provider has been disqualified, the State Agency adds the home to the State Agency list and informs FNS if there are any termination/disqualification actions to add to the National Disqualified List.

Situation 2 – Imminent threat is discovered by the CACFP sponsor

- Step 1:** **The sponsor discovers the imminent threat and immediately informs the health/safety licensing authority.**
- Step 2:** **The sponsor takes action that is consistent with the recommendations or requirements of the health/safety licensing authority. In most situations, this will mean suspension of participation, including Program payments, unless the health/safety licensing authority informs the sponsor that suspension would be contrary to their recommendations or requirements. Other actions that could be taken in lieu of suspension include: requiring corrective action such as mandatory training on a food safety issue or increased monitoring.**

Additional steps depend on the action taken by the sponsor. If the sponsor suspends participation, see Situation 1, Steps 1 - 6.

**Steps in the Process of Suspending Institutions: False or Fraudulent (f/f) Claim
(Applies to Institutions, only)**

Step 1: State Agency sends 2 notices: Serious Deficiency Notice and Proposed Suspension Notice. These may be two separate notices or one combined notice.

Send both notices or the combined notice to:

- Executive Director
- Board Chair
- Responsible principals and responsible individuals
- Copy to FNSRO

(a) Serious Deficiency Notice:

- Identifies all serious deficiencies
- Identifies responsible principals and responsible individuals
- Outlines corrective action required (maximum of 30 days allowed for f/f claim)

(b) Proposed Suspension Notice:

- Proposes to suspend; effective date must be specified in notice and may be no earlier than 10 days after institutions receipt of notice
- Identifies F/F claim as serious deficiency
- Explains the institution's right to request a suspension review and how to request suspension review, including:
 - Name, address and phone number of review official
 - Must request within 10 days of receipt of notice
 - Include written opposition to proposed suspension with request

Step 2: Update the State Agency list with:

- List of all serious deficiencies, and
- Name of the institution proposed for suspension

Step 3: Institution may request a suspension review by the 10th day following the receipt of the notices. The institution includes written rebuttal of the proposed suspension. (Note: If the institution does not request a suspension review, the State Agency issues a Notice of Suspension -- skip steps 3 - 5 below and continue with step 6.)

Step 4: Suspension review official reviews information in the Proposed Suspension Notice and supporting documentation from State Agency, plus written opposition from the institution, and renders a decision within 10 days.

Step 5: The institution notified of the suspension review official's decision.

- (a) If the proposed suspension is upheld, the State Agency sends the institution a Notice of Suspension, with a copy to FNSRO. This notice must inform the institution that:
- That the proposed suspension was upheld
 - That the suspension is effective with date of decision
 - Of the procedures for appealing suspension
 - That if suspension is overturned, institution may claim meals served/admin costs incurred during suspension period
 - Suspension of participation may remain in effect no longer than 120 days following the suspension review decision.
- (b) If the proposed suspension is not upheld, the State Agency must inform the institution that its participation is not suspended, with a copy to FNSRO.

Step 6: **Once the suspension is effective, the institution may request an appeal of the suspension.** (Note: an institution may request an appeal of the suspension, whether or not it requested and received a suspension review.)

Step 7: **If corrective action is not taken within time period set by the State Agency (maximum of 30 days for f/f claim), the State Agency issues a Notice of Proposed Termination for the institution and Proposed Disqualification for the institution and the responsible principals and responsible individuals.**

Step 8: **The institution, and the responsible principals & responsible individuals, request an appeal of the proposed termination and proposed disqualification.**

Step 9: **The hearing official renders a decision on the proposed termination and proposed disqualifications.**

(a) If the proposed actions are upheld, the State Agency sends a Notice of Termination and Disqualification to the institution and Notice of Disqualification to the responsible principals and responsible individuals, with a copy of both to FNSRO. The institution, responsible principals and responsible individuals are placed on the National Disqualified List.

(b) If the proposed actions are not upheld by the hearing official, the State Agency must inform the institution, with a copy to FNSRO, that its agreement is not terminated, that it is not disqualified, and that it may claim reimbursement for eligible meals and allowable administrative costs incurred during the suspension. In addition, the State Agency must inform the responsible principals and responsible individuals that they are not disqualified, with a copy to FNSRO.

Step 10: **State Agency updates its list to reflect disposition of proposed termination and disqualifications and informs FNS.**